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duty to transport them, and could lawfully contract for exemption from liability for any and all acts of negligence. *Coup v. Wabash, etc., Ry. Co.*, 56 Mich. 111, 56 Am. Rep. 374; *Forepaugh v. Delaware, etc., Ry.*, 128 Pa. St. 217, 5 L. R. A. 508; *Robertson v. Old Colony R. R. Co.*, 156 Mass. 525, 32 Am. St. Rep. 482; *Chicago, etc., Ry. Co. v. Wallace*, 66 Fed. 506, 30 L. R. A. 161; *Wilson v. Atlantic Ry. Co.*, 129 Fed. 774. These cases support the contention that by contracting in a capacity other than as a common carrier, the railway company may limit its liability to any extent. The only limitation suggested is that the railway companies may not by such contracts deprive themselves of ability to perform their ordinary duties as carriers. The contention that by such a contract, the railway company becomes a lessor or hirer of tracks, motive power, etc., is upheld only in *Coup v. Wabash, etc., Ry.*, supra, in an action by the circus company for damages, but the court expressly declines to say what would be the liability of the railway company to third persons under such circumstances. *Robertson v. Old Colony Ry.*, supra, and the other cases go on the assumption that the carrier is a carrier still but contracts as a private carrier. The principal case approves the former holding, thus constituting the circus company an independent contractor, to whom plaintiff must look for any possible liability. *Byrne v. Ry. Co.*, 61 Fed. 605, 9 C. C. A. 666, 24 L. R. A. 693; *Hardy v. Shedden Co.*, 78 Fed. 610, 24 L. R. A. 693; *Donovan v. Construction Syndicate*, 1 Q. B. [1893] 629; *Rourke v. Colliery Co.*, 2 C. P. Div. 205; *Powell v. Construction Co.*, 88 Tenn. 692; *Miller v. Ry. Co.*, 76 Iowa, 655. It is worthy of note that in all these cases, the servants, equipments, etc., leased or hired, passed under control of the lessee or hirer in good faith and for undertakings continuing in their nature; none of them apply to the single movement of a train between points on the same line where the train was under control of the lessor's dispatcher who at the same time directed the movements of a large number of other trains on the same road. *Burton v. Railroad*, 61 Tex. 526; *Mallory v. Railway Co.*, 39 Barb. 488, hold the carrier liable under the same class of contracts. In *Byrne v. Ry. Co.*, supra, the test is said to be "whose work was the servant doing?" and "under whose control was he doing it?" The principal case applies this rule to defendant's train dispatcher, engineer, and trainmen and is able to say that they were under the control of the circus company.

CONSTITUTIONAL LAW—JURISDICTION OF FEDERAL COURTS TO REVIEW CONTEMPT PROCEEDINGS IN STATE COURT.—On writ of error from the Supreme Court of Colorado to the United States Supreme Court, to review a judgment upon an information for constructive contempt in the publishing of certain articles concerning an action still pending before the Colorado court, *Held*, that contempt proceedings are matters of local law unaffected either by the first or fourteenth amendment to the Federal Constitution (Justices HARLAN and BREWER dissenting). *Patterson v. Colorado, ex rel. The Attorney General of the State of Colorado* (1907), 205 U. S. 454, 27 Sup. Ct. Rep. 556.

In the principal case, plaintiff in error attempted to justify by asserting the truth of the articles published, which for the purposes of the case was

admitted, and thereby sought to bring himself within the First Amendment to the Federal Constitution, which he asserted was extended to a prohibition on the states by the Fourteenth Amendment. The power to punish for contempt is, by a long line of authorities held to be inherent in courts of superior jurisdiction existing independent of statute (*Ex parte Robinson*, 19 Wall. 505), and in many jurisdictions even in spite of statute (*Hale v. State*, 55 Oh. St. 210; *Little v. State*, 90 Ind. 338, 36 L. R. A. 254); the theory being that what the legislature has not given it cannot take away. So, too, the power is very broad and ill defined, consisting at common law of any comment, whether upon a pending or concluded action tending to bring the court into disrepute (*King v. Almon*, 8 St. Tr. 53; *Wraynham's Case*, 2 St. Tr. 1059, 4 BL. COM. p. 285), a view still maintained in England (*Queen v. Gray* [1900], 2 Q. B. 36), although generally restricted in the United States either by inference from constitutional provisions or the spirit of our institutions to comments upon actions still pending. *Cheadle v. Ind.*, 110 Ind. 301; *Att'y Gen. v. Circuit Court*, 97 Wis. 1. Granted jurisdiction over the case, or the order or motion disobeyed, the court offended has exclusive power to punish for contempt, a control which no other or superior court can disturb by habeas corpus, appeal or in any other manner. II BISHOP, CRIMINAL LAW, § 268; *New Orleans v. New York Steamship Co.*, 20 Wall. 387; *People v. Nevins*, 1 Hill (N. Y.) 154; *Tolman v. Jones*, 114 Ill. 147; *In re Cooper*, 32 Vt. 254; *Ex parte Kearney*, 7 Wheaton. 38. Such being the nature of the power of contempt at common law, slight appeal was made to the "due process of law" clause; but Mr. Justice HARLAN, in his dissenting opinion, argued that the prohibition as to limiting the freedom of the press imposed upon Congress, created a right incident to United States citizenship, which the states could not violate, and that therefore the justification of truth in constructive contempt for publications in a newspaper was a good defense. The majority opinion held, however, that assuming the First Amendment was a prohibition on the states (a point not decided) nevertheless it only forbade previous restraints in the nature of licenses and laid no restraint on punishment after publication. Such is the rule laid down by Chief Justice PARKER in *Com. v. Blanding*, 3 Pick. 304; in *Republican v. Oswald*, 1 Dallas, 319; and adopted by Judge COOLEY; CONSTITUTIONAL LIMITATIONS, 7th ed., p. 603. The power of a court over contempt is in no wise impaired by the Federal Constitution.

CONTRACTS—ACCORD AND SATISFACTION—CONSIDERATION.—A debtor, being in failing circumstances and contemplating bankruptcy, offered a creditor 30 per cent of his debt as a settlement in full. The creditor dissuaded him from going into bankruptcy, accepted his alternative offer, received the money, and closed the account. The creditor now sues for the balance. *Held*, there was sufficient consideration to bind the creditor to the agreement. *Melroy et al. v. Kemmerer* (1907), — Pa. —, 67 Atl. Rep. 699.

The old common law rule is, that part payment of a debt that is already due is not a good accord and satisfaction of the whole debt because there is no consideration for the creditor's agreement to release the balance. *Cumber v. Wane*, 1 Strange, 426. But if there is a new and adequate consideration